

3. The Consolidated Rules, at 40 C.F.R. § 22.13(b) provide in pertinent part that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement and Final Order (“CAFO”) simultaneously commence and conclude this administrative proceeding against Respondent.

4. Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

5. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$16,000 per day for each day of violation up to a total penalty amount of \$177,500 for violations that occurred between January 12, 2009 and December 6, 2013, and \$187,500 per proceeding for violations that occurred after December 6, 2013.

6. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the Delaware Department of Natural resources and Environmental Control (“DNREC”) regarding this action, and will mail a copy of this document to the appropriate DNREC official.

7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”) program under Section 402 of the Act, 33 U.S.C. § 1342.

8. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States or may authorize states to issue such permits pursuant to Section 402(i) of the Act, 33 U.S.C. § 1342(i). The discharges are subject to specific terms and conditions as prescribed in the NPDES permit.

9. Federal regulations promulgated pursuant to the CWA define the phrase “waters of the United States” to include, among other things, (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (ii) all interstate waters; (iii) all other waters such as intrastate lakes, rivers and streams, including intermittent streams, the use, degradation, or destruction of which would or could affect interstate commerce; (iv) tributaries of waters of the United States, and (v) all waters adjacent to these waters. 40 C.F.R. § 122.2.

10. “Pollutant” as defined at Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2 means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials . . . heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

11. Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.

12. Section 502(5) of the CWA, 33 U.S.C. §1362(5), defines the term “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body”.

13. Section 402(a)(2) of the CWA directs the Administrator to prescribe conditions and limitations, including effluent limitations, for NPDES permits to ensure compliance with the requirements of the CWA. 33 U.S.C. § 1342(a)(2); see also 33 U.S.C. § 1311. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on quantity, rate, and concentration of chemical, physical, biological, and other constituents which are discharged from point sources.

14. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the State of Delaware to issue NPDES permits within Delaware on April 1, 1974.

II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW

15. The Town of Bridgeville, Delaware (“ Bridgeville” or “Respondent”) is a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

16. Bridgeville is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

17. At all times relevant to this Order, Respondent has owned and/or operated a municipal wastewater treatment facility (“Facility”), located at the intersection of Main Street and Route 13 Alternate in Bridgeville, Delaware.

18. Respondent's Facility discharges from outfall 001 to the Nanticoke River, which meets the definition of "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

19. On January 7, 2009 DNREC issued NPDES Permit No. DE0020249, with an effective date of February 1, 2009 and an expiration date of January 31, 2012 (the 2009 NPDES Permit) to the Town of Bridgeville. The 2009 NPDES permit authorized Bridgeville to discharge from the Facility through Point Source 001, in accordance with all the terms and conditions of the 2009 permit. The 2009 NPDES permit was administratively extended to April 1, 2014.

20. On February 27, 2014 DNREC issued NPDES Permit No. DE0020249, with an effective date of April 1, 2014 and an expiration date of March 31, 2019 (the 2014 NPDES Permit), to the Town of Bridgeville. The 2014 NPDES Permit authorized Bridgeville to discharge from the Facility through Point Source 001, in accordance with all the terms and conditions of the 2014 permit.

Count I: Failure to Maintain Facilities Operation in Good Working Order and Operation

21. Part II.A. Management Requirements, 3. Facilities Operation of Bridgeville's 2014 NPDES Permit requires that "The permittee shall at all times maintain in good working order and operate as efficiently as possible all collection and treatment facilities and systems (and related appurtenances) installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of this permit."

22. According to a DNREC inspection report dated September 8, 2014 and November 20, 2014, Respondent failed to properly maintain and operate all of its required Rotating Biological Contactor Tanks (RBCs) and its Chlorine Contact Chamber at the Facility during a September 8, 2014 DNREC inspection at the Facility. According to a November 20, 2014 DNREC "Manager's Deficiency Warning Letter" mailed to Bridgeville and explaining in more detail the observed NPDES permit violations, one of the Facility's RBCs had been removed and the entire area where the former RBC had been located was completely covered with sewage solids and was the source of thousands of flies and an unacceptable sewage odor. DNREC's letter described this condition as an unhealthy operation of a wastewater treatment plant and a violation of the 2014 permit. During the DNREC inspection of the Chlorine Contact Chamber, the inspectors observed that the treated wastewater in the contact chamber was very murky looking and that there was an excessive accumulation of solids in the chamber that reduced the effective disinfection of the effluent. DNREC's November 20, 2014 letter stated that this solids buildup was a violation of the 2014 permit and that Bridgeville needed to remove the

excess solids in the bottom of the chamber. DNREC did not assess any civil penalty for the violations observed during the September 8, 2014 inspection. The removed and missing RBC and Chlorine Contact Chamber are part of Respondent's collection and treatment system installed or used by Respondent for water pollution control and abatement at the Facility.

23. Respondent's failure to ensure the proper operation and maintenance of all of its RBCs and its Chlorine Contact Chamber during the September 8, 2014 inspection is a violation of the 2014 permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count II: Failure to Implement a Storm Water Plan in Accordance with the NPDES Permit

24. Part III. Special Conditions, 3. Storm Water Plan of Bridgeville's 2009 NPDES permit requires the permittee to implement and maintain a Storm Water Plan (SWP) to minimize the discharge of contaminated storm water from its facility.

25. During a September 28, 2012 DNREC inspection of Respondent's Facility, the inspectors did not find any records that the Bridgeville employees and contractors had completed any annual Storm Water Pollution Prevention Plan training, as required by Bridgeville's Storm Water Plan, since June 2010. As a follow up of DNREC's September 28, 2012 inspection, DNREC issued a November 8, 2012 "Manager's Deficiency Warning Letter" to Bridgeville, requiring Bridgeville to ensure that all employees shall have received the required annual stormwater refresher training within 30 days of Bridgeville's receipt of the warning letter. DNREC did not assess any civil penalty for Bridgeville's failure to conduct the required annual training for the year 2011.

26. Respondent's failure to implement and maintain its Storm Water Plan by failing to complete the required annual stormwater training for its employees for 2011 is a violation of the 20009 NPDES Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count III: Failure Meet NPDES Effluent Limitations

27. Part I. B. Effluent Limitations and Monitoring Requirements, 1. Outfall 001- Effluent Limitations and Monitoring Requirements of Bridgeville's 2009 NPDES permit sets effluent limitations for discharges from outfall 001 of its municipal wastewater treatment facility. The 2009 NPDES Permit includes specific limitations for Total Nitrogen (TN) and BOD5, including a daily average loading, a daily average concentration, and a daily maximum concentration.

28. As reported in Respondent's DMRs submitted to DNREC, the attached chart (Attachment A) lists specific occasions that Bridgeville's discharges from outfall 001 of the Facility violated the effluent limitations set forth in Part I. B. of the 2009 Permit.

29. Each of Respondent's discharges on numerous occasions since January 2011, as listed in the attached chart, Attachment A, is a separate violation of the 2009 NPDES permit and Section 301 of the Act, 33 U.S.C. § 1311.

III. GENERAL PROVISIONS

30. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.

31. Respondent neither admits nor denies the Findings of Fact set forth in this CAFO.

32. Respondent waives any defenses it might have as to jurisdiction and venue, its right to contest the allegations through hearing or otherwise; and its right to appeal the proposed final order accompanying the Consent Agreement.

33. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

34. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter and consents to issuance of this CAFO without adjudication.

35. Respondent shall bear its own costs and attorney fees.

36. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

37. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

IV. CIVIL PENALTY

38 In full and final settlement of the Complainant's claims for civil penalties for the alleged violations identified herein, Respondent consents to the assessment of, and agrees to pay, in accordance with the terms set forth herein, the total administrative civil penalty of twelve thousand dollars (\$12,000) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c).

39. The civil penalty amount set forth in Paragraph 38, above, is based on a number of factors, including the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g).

40. Respondent shall pay the civil penalty amount described in Paragraph 38, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 39 through 43, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action;
- b. All checks shall be made payable to "**United States Treasury**";
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:

“D 68010727 Environmental Protection Agency”

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid, (202) 874-7026
Remittance Express (REX): (866) 234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/paygov/

Enter **sfo 1.1** in the search field. Open and complete the form.

i. Additional payment guidance is available at:

<http://www.epa.gov/financial/makepayment>

j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Robert J. Smolski
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

41. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

42. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

43. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

44. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

45. The penalty specified in Paragraph 38 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

V. APPLICABLE LAWS

46. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

VI. RESERVATION OF RIGHTS

47. This CAFO resolves only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present and imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

48. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO, if EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, EPA may have under law or equity in such event.

VII. FULL AND FINAL SATISFACTION

49. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged in this CA. Compliance with the requirements and provisions of this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and/or regulations administered by EPA.

VIII. PARTIES BOUND

50. This CAFO shall apply to and be binding upon the EPA, Respondent, and Respondent's officers, employees, agents, successors and assigns. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

IX. EFFECTIVE DATE

51. Pursuant to 40 C.F.R. § 22.45(b), this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective thirty (30) days after it is filed with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5), or until a public comment process pursuant to 40 C.F.R. § 22.45(b) is concluded.

X. ENTIRE AGREEMENT

52. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

XI. FINAL ORDER

FOR RESPONDENT,

COMMISSIONERS OF BRIDGEVILLE
A municipal corporation of the State of Delaware

Date: March 29th, 2016

By: Patricia M. Correll
President

Attest: Lumenia Sime
Secretary

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this 20th day of MAY, 2016

Date: MAY 20, 2016

Jon M. Capacasa
Jon M. Capacasa, Director
Water Protection Division

Town of Bridgeville, Delaware
Docket No. CWA-03-2016-0096

CERTIFICATE OF SERVICE

I certify that on this date I caused to be sent by certified mail, return receipt requested, a copy of this "Consent Agreement and Final Order" to the following persons:

Dennis L. Schrader
Attorney at Law
Morris James Wilson Halbrook & Bayard LLP
P.O. Box 690
107 West Market Street
Georgetown, Delaware 19947-0690


And the original and a copy delivered by hand to:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Additionally, I caused to be sent by first class mail a copy of this "Consent Agreement and Final Order" to the following persons:

Glenn F. Davis
Program Manager
Compliance & Enforcement Branch
Surface Water Discharges Section
Delaware Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, Delaware 19901

Date: MAY 20, 2016


Robert J. Smolski
Senior Assistant Regional Counsel